

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In re:

Circuit City Stores, Inc. *et. al.*,

Debtors.

Chapter 11

Case No. 08-35653-KRH

Jointly Administered

**RESPONSE AND REQUEST FOR HEARING OF TKG COFFEE TREE, L.P. TO
LIQUIDATING TRUST'S FORTY-SECOND OMNIBUS OBJECTION TO LANDLORD
CLAIMS (REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION)**

TKG Coffee Tree, L.P. ("TKG"), by counsel, comes before the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division ("Bankruptcy Court"), files this response and request for hearing to the Forty-Second Omnibus Objection to Landlord Claims (Reduction of Certain Invalid Claims-Mitigation) (the "Objection") filed by the Circuit City Stores, Inc. Liquidating Trust ("Trust"), through Alfred H. Siegel, the duly appointed trustee of the Trust, ("Trustee"), and, in support thereof, states as follows:

1. TKG Coffee Tree, L.P. filed a claim, designated claim number 13010 (the "Claim"), in the above styled case in the amount of \$543,422.12 arising from a lease for premises located in the Coffee Tree Plaza shopping center located in Vacaville, California (the "Premises").

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2. In the Objection, Trustee proposes to reduce the claim to the amount of \$32,675.43, eliminating the entire amount of lease rejection damages, “subject to modification upon timely receipt of mitigation information.”

3. TKG has properly mitigated the rejection damages included in its Claim.

4. TKG engaged the services of Gwen White of Cornish & Carey Commercial, an experienced retail leasing broker to find a replacement tenant for the Premises. The Premises have been listed since the time of lease rejection on March 10, 2009 through industry websites LoopNet and COSTAR as well as on Cornish & Carey’s company website. Listings have been mailed each month to over 220 Cornish & Carey leasing agents as well as over 460 commercial real estate brokers in the local San Francisco Bay Area and adjacent Sacramento markets.

5. TKG has investigated a variety of potential re-leasing strategies including re-leasing the Premises as-is, re-leasing the Premises on a downsized basis for smaller retailers, and razing the building and re-leasing the Premises as a “pad.”

6. Despite extensive efforts, TKG has not been successful in finding a long term tenant for the Premises. TKG has been able to lease the Premises on a seasonal basis at substantially reduced rates. Because the rejection damages claimed by TKG are well in excess of the cap imposed by 11 U.S.C. § 502(b)(6), the income generated from these seasonal leases does not reduce TKG’s Claim.

7. Based on the foregoing, TKG requests that Trustee’s Objection as to TKG’s Claim be overruled.

WHEREFORE, for the reasons stated herein, TKG respectfully requests a hearing and further requests that the Bankruptcy Court overrule the Trust’s Objection as to claim number 13010, grant such other and further relief as the Court deems just and proper.

Dated: June 20, 2012

TKG COFFEE TREE L.P.

By: /s/ Andrew K. Rudiger
Of Counsel

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CERTIFICATE OF SERVICE

I certify that on this 20th day of June, 2012, a true copy of the foregoing pleading was served electronically upon all parties receiving notice via ECF and via electronic mail and U.S. Mail to the following counsel for the Liquidating Trust:

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